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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JAN 10 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Parts 32 and 64 of)
the Commission's Rules to Account)
for Transactions Between Carriers)
and Their Nonregulated Affiliates)

CC Docket No. 93-251

REPLY COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST"), through counsel, hereby submits its Reply Comments to comments filed in the above-referenced proceeding.¹

What is clear from the outset is that the overwhelming number of commenters strongly oppose the Federal Communications Commission's ("Commission") proposed amendments to its affiliate transactions rules.² U S WEST supports those parties who

¹ Comments were filed herein by the following parties: ALLTEL Service Corporation ("ALLTEL"); American Telephone and Telegraph Company ("AT&T"); Ameritech Operating Companies ("Ameritech"); Bell Atlantic Telephone Companies ("Bell Atlantic"); BellSouth Telecommunications, Inc. ("BellSouth"); Cincinnati Bell Telephone Company ("CBT"); Coopers & Lybrand; GTE Service Corporation ("GTE"); Information Technology Association of America ("ITAA"); International Communications Association ("ICA"); MCI Telecommunications Corporation ("MCI"); National Telephone Cooperative Association ("NTCA"); NYNEX Telephone Companies ("NYNEX"); Pacific Bell and Nevada Bell ("Pacific"); Public Utility Commission of Texas ("Texas PUC"); Puerto Rico Telephone Company ("PRTC"); Southern New England Telephone Company ("SNET"); Southwestern Bell Telephone Company ("SWBT"); Sprint Corporation ("Sprint"); Tennessee Public Service Commission Staff ("TPSC"); U S WEST; and United States Telephone Association ("USTA").

² See In the Matter of Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates, Notice of Proposed Rulemaking, 8 FCC Rcd. 8071 (1993) ("NPRM").

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correctly argue that the Commission's proposed rules are unsubstantiated, burdensome, costly and unnecessary. Sprint, for instance, opposes the proposed rule changes because they are "unnecessary--the current rules effectively protect ratepayers against abuse in affiliate transactions--and because they impose unnecessary audit and compliance costs."³ Most notably, Coopers & Lybrand states that "[t]he adoption of this proposed change will add substantial difficulty to the Carrier's affiliate transaction process and complexity and subjectivity to the audit process thereby diminishing the enforcement mechanism that the FCC currently has in place."⁴

Of the twenty-two commenters, only five support the Commission's proposed rule changes.⁵ Although these five commenters argue for the adoption of the Commission's amendments, their arguments are without factual support. Nothing can be gleaned from the few supporting comments which casts any new light on the genesis of the proposed amendments, appropriately referred to as a "mystery" by SWBT.⁶

³Sprint at 2.

⁴Coopers & Lybrand at 1, 3-4. See also, e.g., ALLTEL at 2-3; Ameritech at 1, 23-26; AT&T at 17; Bell Atlantic at 2-4, 8; BellSouth at 4-5, 9, 15-17, 35; CBT at 1, 10; GTE at 2, 10; NYNEX at 1-2, 18-20, 27-28, 40; Pacific at 6-8, 13, 23-24; SWBT at 1-3, 9, 18-20, 24-26, 42; Sprint at 17; SNET at 1-4, 8; and USTA at 1, 5, 8-9, 14-15, 29.

⁵See ITAA, ICA, MCI, Texas PUC and TPSC.

⁶SWBT at 1.

In fact, even though ICA supports the proposed rules, it recognizes the lack of a factual basis to justify adoption of the proposed amendments and points this out repeatedly:

ICA supports most of the proposals in the Notice and urges the Commission to reinforce these proposals and the factual bases for their tentative conclusions.⁷

But because the Notice refers to few specific examples, the general public, legislators and, most importantly, a reviewing court might not understand the factual bases that more than fully support the Commission's proposals. These facts should be elaborated in more detail if the Commission adopts any part of these proposals.⁸

ICA recommends that the Commission provide more details and citations to support its conclusions that the current affiliate transaction rules need to be greatly strengthened.⁹

In its comments, MCI supports the Commission's "efforts to increase the scrutiny of accounting rules, enhance their effectiveness, and expand carrier monitoring requirements,"¹⁰ citing the General Accounting Office's Telephone Cross-Subsidy Study to justify the proposed rule changes.¹¹ However, it is interesting to note MCI's attempt to distort the conclusions found in the GAO Study. Nowhere in the GAO Study nor in its

⁷ICA at 1.

⁸Id. at 6.

⁹Id. at 5.

¹⁰MCI at 2.

¹¹Id., citing United States General Accounting Office Report to Congressional Requesters, FCC's Oversight Efforts to Control Cross-Subsidization, GAO/RCED-93-34, rel. Feb. 3, 1993 ("GAO Study").

conclusions is there any recommendation to strengthen the existing allocation rules. In fact, what the GAO Study concludes regarding the current rules is that "all the safeguards taken together are an effective deterrent against cross-subsidization."¹²

As noted above, those few commenters who support the proposed rules add no meaningful commentary to justify the drastic changes contemplated by the Commission.

There are two additional issues raised by MCI and ICA that merit brief attention as well. First, MCI spends an inordinate amount of time advocating "that the rate-of-return on which non-regulated affiliates base their rate-base calculations should be set at the lowest point of any range that the Commission allows under its alternative regulatory plans."¹³ MCI contends that "[a]llowing the carriers to earn at the top end of permissible ranges creates perverse incentives that ultimately will harm the ratepayers."¹⁴

Again, MCI is engaged in speculation. It fails to provide any factual support for its conclusion. The Commission should not be influenced by MCI's attempt to inhibit nonregulated affiliates from earning a rate of return at the high end. Moreover, this proceeding is certainly not the appropriate docket

¹²GAO Study at 13.

¹³MCI at 9.

¹⁴Id. at 10.

to address earning levels or ranges under price cap regulation.¹⁵

Second, ICA acknowledges that the proposed rules could be burdensome and unnecessary on dominant carriers.¹⁶ In its comments, ICA recommends a "streamlined" approach to costing affiliate transactions.¹⁷ However, before considering whether such an approach is helpful, the Commission must first justify, rather than speculate, why the amendments are necessary and how they serve the public interest.¹⁸ As noted by the vast majority of commenters, the present safeguards, when coupled with productivity and efficiency initiatives, are more than sufficient to prevent cross subsidization and to protect ratepayers. The Commission should not "reinvent the wheel" by adopting its proposed rules or ICA's "streamlined" approach.

Based upon the foregoing and the overwhelming number of comments opposing the proposed rules, U S WEST respectfully urges the Commission to reject its amendments. There has been no

¹⁵See, e.g., In the Matters of Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T Communications and Local Exchange Carriers and Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, Order, 5 FCC Rcd. 197 (1989).

¹⁶ICA at 11.

¹⁷Id.


¹⁸See City of Chicago v. Federal Power Commission, 385 F.2d 629, 637 (D.C. Cir. 1967). In this case, the Court stated: "What is required by the Rule of Law is that agency policies and standards, whether or not modifications of previous policies, be reasonable and non-discriminatory, and flow rationally from findings that are reasonable inferences from substantial evidence." (Emphasis added.)

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evidence presented in either the Commission's ~~NPRM~~ or the comments filed to justify the proposed rule changes. The Commission's proposed amendments are unnecessary and will be extremely burdensome and costly for carriers and their affiliates to administer.

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January 10, 1994

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 10th day of January, 1994, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.**, be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.


Kelseau Powe, Jr.

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